IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4388 OF 1995

WITH

WRIT PETITION NO. 6297 OF 2002

Uday Bojraj Toney ..Petitioner

V/S

The Chairman,

Akkalkot Education Society & Ors. ..Respondents

A. N. Mulla for Petitioner.

R.S. Kate for Resp. No.1.

A.P. Vanarase for Respondent No.3.

CORAM : A.P. DESHPANDE, J.

DATE : 11TH JANUARY, 2007.

P.C.

1. The petitioner was possessing qualification of B.A., B.P.Ed. (Bachelor of Physical Education) and sought appointment as Physical Education Teacher in the employment of the Respondent. The Respondent No. 1 administeres and manages a Junior College and in the said junior college a post of Physical Education Teacher was available in the year 1991. The said post was part time post. It is the case of the petitioner that an advertisement was issued and pursuant to the advertisement the petitioner applied

for the post of Physical Education Teacher and consequently came to be appointed. Learned counsel for the petitioner submits that no appointment order was issued to the petitioner and petitioner has thereafter worked in academic session 1992-93 and 1993-94. It is not in dispute that petitioner's appointment in academic session 1992-93 and 1993-94 was again in persuance of the advertisement issued by the Respondent. Learned counsel for the petitioner submits that on completion of satisfactory service for the period of 2 years, petitioner has assumed confirmation. The petitioner was discontinued from service after the end of academic session 1992-93 and terming the said discontinuance as otherwise termination the petitioner filed the Appeal before the presiding officer, School Tribunal. The Respondent opposed the Appeal by contending that the appointment of the petitioner was against the reserved post and the petitioner was appointed as no candidate from the reserve category was available. It is also the stand of the Respondent that as the appointment was against the reserved post the appointment was made for one academic year on each occasion and an additional ground was raised by the respondent before the tribunal and the same is to the effect that the petitioner was not eligible and qualified for the appointment as Physical Education Teacher in

Junior College as he does not possess the qualification required under Government Resolution issued in the year 1990. The Petitioner's case is that the Physical Education Teacher's qualification are prescribed under the MEPS Rules. It is contended that the petitioner was eligible and qualified according to the statutory Rules. Learned counsel submits that the Executive powers of the State under Article 162 of the Constitution of India cannot be exercised when statute is occupying the field. It is submitted that the Government cannot by issuing the Resolution effect any change touching the qualification laid down under the Rules. It is thus contended that as the petitioner was qualified according to the qualifications prescribed by the Rules he cannot be termed as untrained teacher by placing reliance on the Government Resolution.

2. The School tribunal has held that the petitioner was not eligible for appointment as physical education teacher as he did not satisfy the criteria laid down in the Government Resolution dated 25/1/1990. The Tribunal further proceeded to hold, having regard to the nature of the appointment that the appointment of the petitioner was a temporary

appointment as the post was earmarked for reserved category. So the petitioner has two impediments in his way to succeed in the present petition (1) finding to the effect that the appointment of the petitioner was against the post reserved for backward class and hence the appointment was temporary. (2) that the petitioner was not eligible and qualified to hold the said post in view of the Government Resolution of 1990. Coming to the facts of the writ petition No. 6297 of 2002 it is to be noted that when the Appeal of the petitioner pursuant to his termination effected at the end of the academic session 1992-93 was pending before the Tribunal an advertisement was issued with a view to appoint a Physical Education teacher for academic session 1998-99. The petitioner pursuant to the said advertisement applied for the post of phisical education teacher and he was given a temporary appointment for one academic session viz. academic session 1998-99 after the end of academic session 1998-99 the petitioner was dismissed from the service and aggrieved thereby the petitioner filed yet another Appeal before the School Tribunal and the judgment therein is impugned in Writ Petition No. 6297 of 2002. In this petition learned counsel for the petitioner submits that for a termination to

 be valid, approval/sanction of the department is necessary and in the absence of approval/sanction from the department no termination can take effect. It is contended that as the termination of the petitioner effected at the end of academic session of 1992-93 was not approved by the department he continues to be in employment notionally. In substance the submission is that unless and until the termination is approved by the Deputy Director of Education the same cannot take effect.

3. In the judgement rendered by the Tribunal which is impugned in Writ Petition No. 6297 of 2002 it is held that as the appointment of the petitioner was only for one academic session and temporary, the petitioner cannot be treated to have been appointed on probation and hence no right is created in the petitioner qua the post.

4. The larger question raised by the learned counsel for the petitioner in regard to the competency of the State Government to change the eligibility criteria which is laid down under the rules by issuing administrative instructions requires a detail scrutiny and hence the same will be dealt with if and in case it is necessary.

5. On appreciation of material and evidence on

record the Tribunal has reached to a conclusion that the appointment of the petitioner which is subject matter of Writ Petition No. 4388 of 1995 is year to year appointment on temporary basis for the reason that the post was reserved for backward class candidate. The Tribunal has placed reliance on the language used in the appointment order which appears to have been placed before the School tribunal. The tribunal has rejected the petitioner's contention that the post wherein the petitioner was appointed was not a reserved post. The Tribunal had made a reference to the mention made in the appointment order about the post being reserved and the appointment of the petitioner being against a post reserved for backward class. Reverting back to the appointment order learned counsel for the petitioner states that no appointment order was issued to the petitioner to work as physical education teacher for the academic session 1991-92, 1993-94. Suffice it to state that this point was not taken in the Appeal Memo filed before the School Tribunal. Even in the instant writ petition there is no averment to the effect that petitioner was not issued any appointment order. There is no material placed on

record to substantiate the contention that no appointment order was issued and/or appointment order filed on the record of the School Tribunal was

not served on the Petitioner. Finding of fact reached by the Tribunal about the appointment of the petitioner being against the reserved post cannot be faulted. Reliance has been placed by the tribunal on the appointment orders indicating the nature of appointment being temporary also cannot be faulted. Petitioner has failed to establish his case that no appointment order was issued or served on the petiioner and those which are placed before the tribunal do not indicate the real state of the nature of the appointment. As I do not see any reason to disagree with the view taken by the Tribunal about the appointment of the petitioner being temporary in nature, the larger question raised by the petitioner about the competence of the State Government to alter the eligibility criteria laid down under the Rules by issuing executive instructions does not require to be dealt with in this writ petition. The writ petitions deserve to be dismissed with no order as to costs, and I proceed to dismiss the same. Rule discharged.

(A.P.DESHPANDE, J.)